

REMARKS

Claims 1, 3, 6-11, 13, 15-16, 18, 21-26, 28 and 30, as amended, remain in this application for the Examiner's review and consideration. Claims 2, 12, 14, 17, 27, 29 and 31-36 were previously canceled from consideration with the present application without prejudice to pursue the subject matter of these claims in one or more divisional or continuation applications. Claims 1, 11, 13, 16, 26 and 28 were amended to correct informalities. In addition, claim 1 was amended to recite using the created tree as the overlay multicast tree to deliver data from the source comprising a provider of a given service to an identified group of nodes comprising subscribers having access to the given service. Support for this amendment can be found in the specification, for example at page 6, lines 17-25. As these amendments do not introduce any new matter into the above identified application, their entry at this time is warranted.

Claims 1, 3, 6-11, 13, 15-16, 18, 21-26, 28 and 30 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reasons given in paragraphs 4-6 of the Office Action. It was asserted that the use of the phrase "substantially" renders the claims indefinite. In addition, it was asserted that there was insufficient antecedent basis for the "connecting additional points" in claims 11 and 26. Applicants assert that this rejection has been overcome for the reasons that follow.

Applicants note that the use of the term "substantially" in a claim is permissible and does not itself render the claim indefinite. (MPEP § 2173.05(b)) In addition, Applicants assert that one of ordinary skill in the art would understand what is meant in the present claims by "substantially equivalent amount of area" and "substantially in half". However, to expedite allowance of the present case, Claims 1, 13, 16 and 28 have been amended to remove the word "substantially". In addition, claims 11 and 26 have been amended as suggested in the Office Action to correct the antecedent basis issue. Therefore, Applicants assert that this rejection has been overcome and respectfully request that the rejection be reconsidered and withdrawn.

Claims 1, 3, 6-11, 13, 15-16, 18, 21-26, 28 and 30 were rejected under 35 U.S.C. § 101 because the claim was directed to non-statutory subject matter for the reasons given in paragraph 7 of the Office Action. It was asserted that the claims were directed solely to the

manipulation of data without any tangible results. Applicants assert that this rejection has been overcome for the reasons that follow.

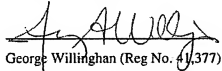
Claim 1 has been amended to recite the tangible result of using the created tree as the overlay multicast tree to deliver data from the source comprising a provider of a given service to an identified group of nodes comprising subscribers having access to the given service. According to MPEP § 2106 a “claimed invention is directed to a practical application of a 35 U.S.C. 101 judicial exception when it: (A) “transforms” an article of physical object to a different state or thing; or (B) otherwise produces a useful, concrete and tangible result...” (emphasis supplied) Therefore, the claimed invention only needs to meet one of the criteria, transforming a physical object or producing a tangible result. As currently amended, claim 1 produces the useful, concrete and tangible result of using the created tree to deliver data from a service provider to a group of subscribers. Therefore, Applicants assert that the invention as currently recited in claim 1 is directed to statutory subject matter.

It was also asserted that claim 16 needed to be amended to either have independent physical acts or be limited to a practical application by producing a concrete, tangible and useful result. Claim 16 is directed to a computer readable medium containing a computer executable code that when read by a computer causes the computer to perform a method for constructing an overlay multicast tree to deliver data from a source to an identified group of nodes. Therefore, claim 16 is directed to functional descriptive material. According to MPEP § 2106.01, when “functional descriptive material is recorded on some computer readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since the use of technology permits the function of the descriptive material to be realized.” Claim 16 is directed to just such a computer readable medium containing the computer executable code. Therefore, Applicants assert that claim 16 is directed to statutory subject matter, and Applicants assert that this rejection has been overcome and should be withdrawn.

Applicants assert that all claims are now in condition for allowance, early notification of which is respectfully requested. As the present amendments do not introduce any new claims above the original number of filed claims, no fees are believed due for the submission of this amendment. No other fees are believed due.

Respectfully submitted,

Date: January 26, 2009

A handwritten signature in black ink, appearing to read "George Willingham", is written over a horizontal line.

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